IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5374 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JEWELFAB LIMITED

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 5374 of 2001
MR PARESH M DAVE for Petitioner No. 1-2
MR ASIM J PANDYA for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 06/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. By an order dated 16.05.2004 (Annexure C), Customs, Excise & Gold (Control) Appellate Tribunal, West Zonal Bench at Mumbai (for short "CEGAT") rejected the application for condonation of delay in filing the appeal late. The same is challenged in this petition.

#. It is not in dispute that the director of the petitioner-firm was bedridden for number of months. Therefore, the appeal could not be filed within time and there was a delay of 65 days in filing the same before the CEGAT. Inspite of this, the CEGAT refused to condone the delay of 65 days on the ground that when manufacturing process and other affairs of the company were going on during illness of Shri Chetan Shah, Director of the company, then appeal also could have been filed within the period of limitation. This cannot be said to be a ground for rejecting the application for condonation of delay. Continuing the manufacturing process and other affairs of the company through other persons is a different thing than the concerned person applying his own mind and challenging the order before the CEGAT in appeal. One cannot expect a bedridden person to unnecessarily burden himself with court's litigation. It is natural conduct on the part of any human being that after full recovery from the illness, one may apply his/her mind to challenge the order before the court. When there was a genuine ground, then the Tribunal ought to have condoned the delay. By not doing so, the Tribunal had committed jurisdictional error which calls for the interference by this court in this writ jurisdiction.

#. In view of the above, the impugned order dated 16.05.2001 Annexure `C' passed by the CEGAT rejecting the application for condoning the delay is hereby quashed and set aside and the said application for condoning the delay is accepted and the CEGAT shall take up the main appeal with stay application and pass appropriate orders on it in accordance with law. Rule is made absolute with no order as to costs.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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